



**Legislative Council Staff**

*Nonpartisan Services for Colorado's Legislature*

**Revised Fiscal Note**

(replaces fiscal note dated March 4, 2021 )

<b>Drafting Number:</b>	LLS 21-0017	<b>Date:</b>	March 24, 2021
<b>Prime Sponsors:</b>	Sen. Danielson; Fields	<b>Bill Status:</b>	Senate Appropriations
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**Bill Topic: CHILD SEXUAL ABUSE ACCOUNTABILITY ACT**

<b>Summary of Fiscal Impact:</b>	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill allows a victim of sexual misconduct as a minor to bring civil claims against the actor and the organization managing the youth program or youth-related activity where the misconduct occurred, including against public entities. Beginning in FY 2021-22, it will increase state and local revenue and expenditures on an ongoing basis.

**Appropriation Summary:** In FY 2021-22, this bill requires an appropriation of \$13.7 million to the Department of Personnel and Administration.

**Fiscal Note Status:** This fiscal note reflects the introduced bill, as amended by the Senate Judiciary Committee.

**Table 1  
State Fiscal Impacts Under SB 21-088**

		Budget Year FY 2021-22	Out Year FY 2022-23
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	up to \$13,749,156	-
	Reappropriated Funds <sup>1</sup>	-	up to \$13,742,956
	Centrally Appropriated	\$15,228	\$15,228
	<b>Total Expenditures</b>	<b>up to \$13,764,384</b>	<b>up to \$13,758,184</b>
	<b>Total FTE</b>	<b>16.9 FTE</b>	<b>16.9 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

<sup>1</sup> Out year costs will be paid using a mix of General Fund and cash funds reappropriated to the DPA.

## **Summary of Legislation**

This bill allows a person who is a victim of sexual misconduct that occurred when the victim was a minor to bring a civil action for damages against the actor who committed the misconduct. If the misconduct occurred at a youth organization or youth-related activity, the victim may also bring a civil claim against the managing organization of the youth program or activity. The victim may bring a claim against a public employee or agent or public entity that operates a youth program or activity, overriding the Colorado Governmental Immunity Act's restrictions or any other state law prohibiting the claim in these situations. The cause of action applies retroactively and there are no limitations on when a victim can bring an action.

## **Assumptions**

This fiscal note assumes that the current Colorado Governmental Immunity Act (CGIA) liability caps still apply in all lawsuits, currently set at \$387,000. This number is adjusted annually by the Secretary of State, and may increase in the future. Based on current incident rates reported in the Division of Youth Services, the total number of youth served in Colorado state programs and activities conducted by institutions of higher education and History Colorado (60,000 youth), and by the large number of persons who interact with children in state-run programs, this fiscal note assumes that 55 cases will be filed annually. Of these, the fiscal note assumes that 50 percent of cases will result in a judgement against the state.

## **State Revenue**

To the extent the bill increases civil case filings, state revenue will increase beginning in FY 2021-22. This fee revenue is subject to TABOR.

## **State Expenditures**

This bill will increase state expenditures in the Department of Personnel and Administration (DPA) by up to \$13.7 million and 16.9 FTE in FY 2021-22 and in future years. For the first year, it is assumed that these costs will be appropriated from the General Fund. In future years, funds will be reappropriated to the DPA from other state agencies based on the number of claims incurred, and costs will be paid using a mix of General Fund and cash funds from affected agencies. The bill will also increase workload in the Judicial Department. Costs are displayed in Table 2 and described below.

**Table 2  
 Expenditures Under SB 21-088**

	FY 2021-22	FY 2022-23
<b>Department of Personnel &amp; Administration</b>		
Personal Services	\$57,782	\$57,782
Operating Expenses	\$1,350	\$1,350
Capital Outlay Costs	\$6,200	-
Damage Payments	up to \$10,642,500	up to \$10,642,500
Legal Services	\$3,041,324	\$3,041,324
Centrally Appropriated Costs <sup>1</sup>	\$15,228	\$15,228
FTE – Personal Services	1.0 FTE	1.0 FTE
FTE – Legal Services	15.9 FTE	15.9 FTE
<b>Total Cost</b>	<b>up to \$13,764,384</b>	<b>up to \$13,758,184</b>
<b>Total FTE</b>	<b>16.9 FTE</b>	<b>16.9 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Personnel and Administration.** This bill allows sexual misconduct victims to hold public entities, employees, and agents liable for damages, which will increase expenditures in the state's risk management program in the Department of Personnel and Administration. The state's actual costs will depend on a number of factors, including the number and complexity of cases, case outcomes, and the timing of cases and judgments. Potential costs include damage payments and legal services to defend the state in these cases, as outlined below. As discussed in the Assumptions section, the fiscal note assumes 55 cases will be brought against the state per year, with 50 percent of cases resulting in state liability. In addition, due to the large number of anticipated claims, DPA will need an administrator to manage and track claims, and facilitate related training matters.

- **Damage payments.** Damage payments are estimated to be paid out at the current CGIA liability cap of \$387,000, subject to annual adjustment. Plaintiff's attorney fees are included in this cap. In the estimated 28 cases per year, this will result in damage payments of up to \$10.6 million
- **Legal services.** The Department of Law will represent the state in these cases. Assuming 520 hours per case, state agencies will have costs of \$3.0 million, paid to the Department of Law using reappropriated funds. The Department of Law requires 15.9 FTE for this work. Legal services will be required in all cases brought against the state under the bill.

Depending on the number of cases annually, costs may vary from year to year or be spread out over a number of years. In addition, since this bill applies retroactively, there may be an initial spike in claims in the first few years. Costs may decrease over time after any initial influx of cases, and to the extent greater liability encourages agencies to take additional steps to prevent instances of sexual misconduct by employees and others who interact with children in state-run programs. It is assumed that ongoing costs will be addressed through the annual budget process once more information on cases, costs, and damage awards is known.

Finally, the department is expected to see an increase in the self-insured retention costs, additional limits on claims of this type, and potentially large increases in premium costs. These costs will also be addressed through the annual budget process and borne by all state agencies participating in the risk liability program.

**Judicial Department.** To the extent that more civil cases are filed, workload for the trial courts will increase. This workload increase can be accomplished within existing resources.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$15,228 in FY 2021-22 and \$15,228 in FY 2022-23.

**TABOR refunds.** Under the December 2020 Legislative Council Staff Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2021-22 or FY 2022-23, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

## **Local Government**

Similar to the state, to the extent that there is an increase in the number of claims relating to local government employees, agents, and entities, costs and workload may increase for local governments. Considering the large amount of youth programs and activities run by local government entities, costs for local governments may be greater than those for the state. Actual costs for a particular local government will vary based on the number of cases filed within that jurisdiction.

## **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## **State Appropriations**

For FY 2021-22, this bill requires a General Fund appropriation of \$13,749,156 and 1.0 FTE to the Department of Personnel and Administration, of which \$3,041,324 and 15.9 FTE is reappropriated to the Department of Law.

## **State and Local Government Contacts**

Counties	District Attorneys	Education
Higher Education	Information Technology	Judicial
Law	Municipalities	Natural Resources
Personnel		